

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.08.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.24944 of 2018

J.Sridharan

..... Petitioner

vs.

1.The State of Tamil Nadu,  
rep.by its Principal Secretary to Government,  
Transport Department,  
Secretariat, Fort St.George,  
Chennai-600 009

2.The Managing Director,  
State Express Transport Corporation  
(Tamil Nadu) Ltd.,  
Thiruvallurvar House, Pallavan Salai,  
Chennai-600 002

3.The Administrator,  
Tamil Nadu State Corporation  
Employees' Pension Fund Trust,  
Thiruvallurvar House,  
Pallavan Salai,  
Chennai-600 002

... Respondents

Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents to pass appropriate orders for accounting the regular service rendered by the petitioner from 27.08.1985 to 11.06.1996 (10 years 9 months 15 days) with continued Provident Fund Contribution service in the post of Assistant Labour Welfare Officer from 12.06.1996 for regular pension and other terminal benefits in the light of order passed in similar cases as per the order of the first respondent in Government Letter No.16396/C1/2015, dated 22.04.2016, by considering the representation submitted by the petitioner dated 17.04.2017 and 11.06.2018 with all consequential and other attendant benefits along with interest, within a time frame to be fixed by this Court.

For Petitioner .. Mr.G.Sankaran

For Respondents ... Mr.J.Pothiraj, Spl.G.P.

#### ORDER

The petitioner was originally appointed as Graduate Apprentice in Thiruvalluvar Transport Corporation, from 13.05.1981 to 13.05.1982. He was thereafter posted as Clerk from 14.05.1982 to 26.8.1985, on temporary basis. Subsequently, the petitioner was regularized in the post of Record Clerk-cum-Conductor (RCC) with effect from 27.08.1985 and he was working as such till 30.08.1986. The petitioner's services thereafter have been regularized as Junior Assistant with effect from 01.09.1986 to 30.04.1992. Thereafter, he was promoted as Assistant on 01.05.1992 and worked as such till 11.06.1996. According to the petitioner, during his entire period of service as mentioned above, he rendered 10 years 9 months and 15 days service in the regularized service, in the posts of Record Clerk-cum-Conductor, Junior Assistant and Assistant, but worked on consolidated pay for a period of 4 years, 3 months and 13 days.

2. When the petitioner was working as Assistant, he responded to a recruitment for filling up the vacancy to the post of Assistant Labour Welfare Officer (ALWO)/ Assistant Manager (AM) and the recruitment was to take place only from in-service candidates qualified for appointment. Since the petitioner was fully qualified, he applied for the post, through his superior, and on the basis of his qualification and experience, he was selected for appointment. He was appointed to the post of Assistant Labour Welfare Officer on 05.06.1996 and the condition for such appointment was that he should resign his present post and his entry into the Supervisor Cadre will be regularized as a fresh entrant only. His basic salary was fixed by giving him pay protection in the scale of pay of 2010-3240.

3. The petitioner, in order to join in the new post, resigned his position as Assistant and he was relieved from duty on 11.06.1996 A.N. and he joined the new post of ALWO on the very next day morning i.e. on 12.06.1996, without any break in service. The petitioner's pay scale has been fixed by applying FR 22(B) and he

continued to work in the post of ALWO from 12.06.1996 till 29.06.2015 (19 years and 18 days), till he was posted as AM on 30.06.2015. Thereafter, the petitioner reached the age of superannuation and retired from service on 30.04.2016.

4.The grievance of the petitioner is that the service rendered by him in the post of ALWO alone was taken into consideration towards his retirement and pensionary benefits and his earlier service rendered by him as RCC, Junior Assistant and Assistant for 10 years 9 months and 15 days was not taken into consideration. According to him, he was entitled to count his past service for the purpose of retirement and pensionary benefits, since there was no break in the service when the petitioner joined the post of ALWO and his resignation was only because of the condition imposed for joining the new post. Therefore, it should be construed as technical resignation and in which case, there is no question of forfeiture of past service.

5.The learned counsel Mr.G.Sankaran, appearing for the petitioner, would straight away draw the attention of this court to TNSTC Employees Pension Fund Trust Rules and he would draw the attention of this Court to Rule 16(e), which reads as under:

"Rule:16(e) - Forfeiture of Service  
on Resignation:

Resignation from service or post  
entails forfeiture of past services.

Provided that a resignation shall not entail forfeiture of past service, if it has been submitted to take up with proper permission, another appointment, under Government Department/State Public Sector Undertaking/Board. In such case, the pensionary benefits shall be transferred to the new employer's pension fund/EP Scheme 1995, as the case may be, and such benefits shall not be directly paid to the individual."

6. Therefore, the learned counsel would submit that the issue raised in the writ petition squarely covered under the above Rules and the forfeiture of past service did not arise in the case of the petitioner, since he tendered his resignation to take up another appointment in the same Corporation. There is also no break in service, which is established by the documents of the respondent Corporation itself. The appointment order was issued to the petitioner on 05.06.1996, and therefore, the learned counsel would submit that the petitioner is entitled to count his past service rendered by him in the post of RCC, Junior Assistant and Assistant and there is no justification for the Corporation to deny him the benefit of past service and therefore, the learned counsel would submit that the petitioner is entitled to the issue of writ of mandamus as prayed for in the writ petition.

7. Per contra, Mr. J. Pothiraj, the learned Special Government Pleader appearing on behalf of the respondent Corporation would submit that the petitioner is not entitled to the relief as prayed for in the writ petition for the reason that at that time when he was appointed, a condition was imposed that he was to be treated as a fresh entrant only. Moreover, the petitioner was not promoted to the post of ALWO, but was only appointed as a direct recruit and therefore, he cannot count his past service. According to the learned Special Government Pleader, the colleagues of the petitioner did not have the benefit of past service, in similar situation. In fact, the substance of his argument is reflected in paragraph No.8 of the counter affidavit, which is extracted hereunder:

"8. I humbly submit that in the event of petitioner not resigning the post in Working Group and joined the new post he ought not have received the new post because by this gesture the respondent over looked the condition of only considering senior superintendents for elevation to the cadre of Assistant Welfare Officer. The impugned order has to be treated as promotion in the event of considering his prayer but the fact is that the petitioner was not in the zone of consideration at all to consider

promotion to him. Having accepted to forgo the past service now he is not entitled to seek for considering the benefit foregone by him. All his colleagues did not have the benefit of becoming such cadre like that this petitioner. Only by virtue of resigning the post he was promoted and was made as Assistant Manager on 30.06.2015. In the event of no resignation there was no chance for him to become Assistant Manager at all. Hence, by considering his prayer Art.14 will be liable to be not enforced at all. Such kind of situation shall not be allowed by the Hon'ble High Court by considering his innocuous prayer."

The learned Special Government Pleader would therefore submit that the writ petition is devoid of merits and liable to be dismissed.

8.This Court is unable to comprehend as to what exactly the objection of the Corporation in responding to the claim of the petitioner herein is. The averments as contained in paragraph No.8 of the counter affidavit did not at all address the claim of the petitioner in proper perspective. In fact, the entire claim of the petitioner, as per Rule 16(e) of the TNSTC Employees Pension Fund Trust Rules, is not addressed at all, in the counter affidavit. Moreover, this Court finds that Rule 16(e), which is extracted supra, is very clear and also the facts of the case would squarely place the petitioner's claim within the ambit of Rule 16(e) of the Pension Fund Trust Rules.

9.The facts as narrated above in fact were not disputed at all. However, the Corporation has strangely come up with the case of petitioner not being promoted to the post of ALWO and was actually directly appointed with the condition. Such contention is not worthy of serious consideration by this Court for the reason that under the relevant Government Instructions and Rules, it is always open for a person to take up higher post by resigning his erstwhile post with the permission from his own department. In such cases, it is held that the resignation is only technical and will not result in forfeiture of past service.

10. In this case, the claim of the petitioner is much stronger that he was not being posted to any other organization or other Government Service, but within the same Corporation service itself. In fact, even if there is delay between two spells of employment, such delay is condonable up to a particular limit. In such event, the case on hand is concerned, the petitioner did not suffer any break in service, as he was relieved on 11.06.1996 and joined the new post immediately on 12.06.1996. Therefore, this Court is of the considered view that the petitioner cannot be denied his past service for his retirement and pensionary benefits. This Court feels that the petitioner has made out a clear case for grant of relief and the objections raised on behalf of the respondent Corporation are without any merits and the same are liable to be rejected outright.

11. For the above said reasons, the writ petition is allowed and consequently, the respondents are directed to count the regular service rendered by the petitioner from 27.08.1985 to 11.06.1996 (10 years 9 months and 15 days) with continued Provident Fund Contribution service in the post of Assistant Labour Welfare Officer from 12.06.1996 for regular pension and other terminal benefits.

12. The respondents are directed to pass appropriate orders granting all attendant benefits by complying with the direction of this Court within a period of four weeks from the date of receipt of a copy of this order. No costs.

Msk

Sd/-  
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,  
Transport Department,  
Secretariat, Fort St. George,  
Chennai-600 009

2.The Managing Director,  
State Express Transport Corporation  
(Tamil Nadu) Ltd.,  
Thiruvallurvar House, Pallavan Salai,  
Chennai-600 002

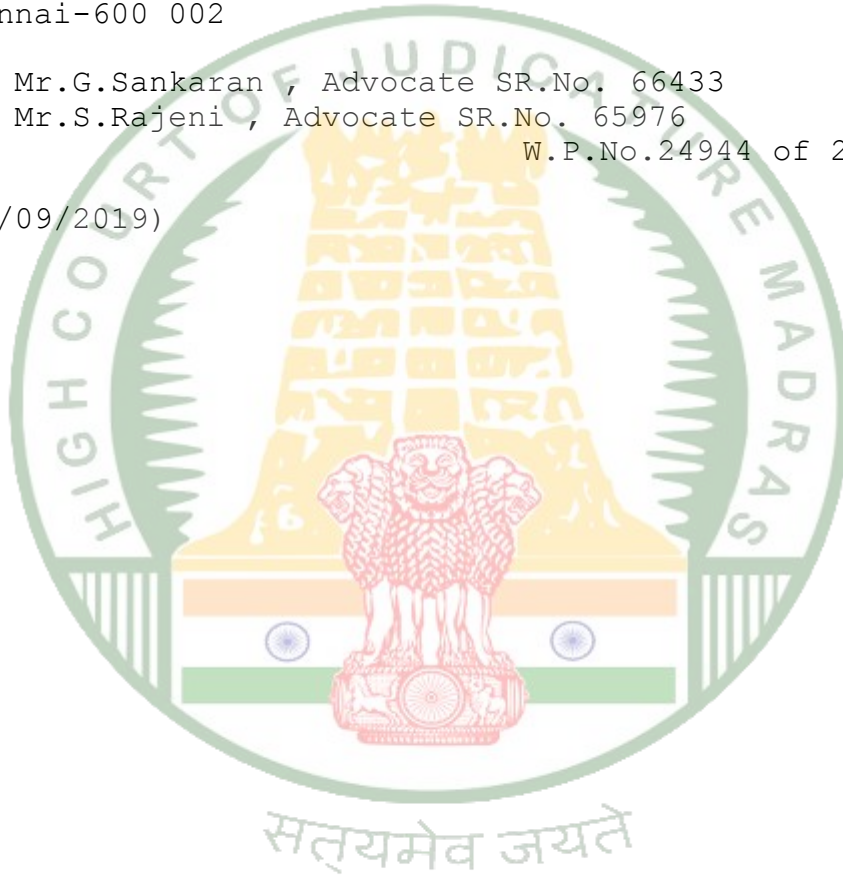
3.The Administrator,  
Tamil Nadu State Corporation  
Employees' Pension Fund Trust,  
Thiruvallurvar House,  
Pallavan Salai,  
Chennai-600 002

+1cc to Mr.G.Sankaran , Advocate SR.No. 66433

+1cc to Mr.S.Rajeni , Advocate SR.No. 65976

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A.SK(05/09/2019)



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